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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,428	04/03/2006	Masaaki Fukuyasu	ADT315	7570
23581	7590	05/17/2007	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			RODRIGUEZ, RUTH C	
			ART UNIT	PAPER NUMBER
			3677	
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			05/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/574,428	FUKUYASU ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ruth C. Rodriguez	3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 March 2007.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 03 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d) or (f), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 03 April 2006 has been considered for this Office Action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Newly presented claim 1 includes the limitation "a property of retaining a fixed shape of 95 percent or less". This limitation renders the claim indefinite because it is unclear how the twist tie will not retain a fixed shape as having a 95 percent or less

retention as claimed (is the tie constantly moving). Additionally, it is unclear how the retention of 95 percent or less is determined since the claim does not provide any details on how this percentage is being determined and with respect to what position it is being determined. Finally, the claim does not provide any details of the timeframe used to determine this retention or whether the claim limitations are met while an user is deforming the twist tie. For purpose of examination, this limitation is not considered since it's meaning is unclear.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kincel et al. (US 6,372,068).

A ribbon-shaped nonmetallic twist tie has a core part and a wing part constituted from a non-halogenous material (C. 5, L. 17-67 and C. 6, L. 1-46). The core part and the wing part each extend a length of the tie. The twist tie has a total width of 1.5 to

20.0 mm, a maximum thickness of the wing part of 0.02 to 0.20 mm and a maximum thickness of the core part of 0.04 to 0.3 mm (C. 7, L. 59-64, and C. 8, L. 118-243-17 and 41-45).

7. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Contreras et al. (US 7,011,879).

A ribbon-shaped nonmetallic twist tie has a core part and a wing part constituted from a non-halogenous material (C. 4, L. 37-60 and C. 5, L. 13-17). The core part and the wing part each extend a length of the tie. The twist tie has a total width of 1.5 to 20.0 mm, a maximum thickness of the wing part of 0.02 to 0.20 mm and a maximum thickness of the core part of 0.04 to 0.3 fold of the total width (C. 5, L. 33-41).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincel et al.

Kincel discloses a twist having all the features mentioned above for the rejection of claim 1. Kincel discloses the twist tie has a drawing-out property where a degree of curving of the drawing-out direction is 10 degrees or less (C. 6, L. 25-32). Kincel fails to

disclose that the twist tie has a torsion strength of 5 to 15 N, a tensile strength of 5,000 to 30,000 Mpa, a property of forming a fixed shape of 90 percent or more and a property of retaining a fixed shape is of 70 to 95 percent and a curl radius to the winding direction retains the range of 50 to 200 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the twist tie is capable of having a torsion strength of 5 to 15 N, a tensile strength of 5,000 to 30,000 Mpa, a property of forming a fixed shape of 90 percent or more and a property of retaining a fixed shape is of 70 to 95 percent and a curl radius to the winding direction retains the range of 50 to 200 mm since the twist tie meets all the structural limitations and is made from the same materials being claimed. Especially since the main objective of Kincel is to obtain a twist tie resisting untwisting and the claims do no provide any structural detail that will provide the claimed parameters when compared to the prior art.

### ***Response to Arguments***

10. Applicant's arguments filed 06 March 2007 have been fully considered but they are not persuasive.
11. The Applicant argues that Kincel and Contreras fail to disclose "a property of retaining a fixed shape of 95 percent or less". This argument fails to persuade because this limitation is considered indefinite and is not being considered since this limitation is unclear.

**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gallion et al. (US 4,525,898), Stolk et al. (US 4,797,313 and US 5,238,631), Iwai et al. (US 5,154,964 and US 5,342,687), Feltman (US 5,607,748) and Kincel et al. (US 6,673,413 B1) are cited to show state of the art with respect to ribbon-shaped nonmetallic twist tie.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee that the applicant is paying by check **should not** be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on (Date).  
(Typed or printed name of person signing this certificate)  
(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response has been transmitted by facsimile will cause further unnecessary delays in the processing of your application, duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez  
Patent Examiner  
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rcr  
May 14, 2007

  
JJ Swann  
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